(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: NOV 2 9 2013 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions with progressive post-baccalaureate experience equivalent to an advanced degree. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner seeks employment as a Science, Biology and Gateway to Technology (GTT) Teacher. At the time of filing, the petitioner was working for Maryland. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel; 2012 public school progress reports for and 2012 Maryland School Assessment (MSA) Reading results for public schools.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The record reflects that the petitioner received a Bachelor of Science degree in Biology from the in 1998 and that she has more than five years of progressive post-baccalaureate experience as a teacher. Accordingly, the record reflects that the petitioner qualifies as a member of the professions with progressive post-baccalaureate experience equivalent to an

advanced degree under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(3)(i)(B).[1] The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (NYSDOT), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The petitioner has established that his work as a Science and GTT Teacher for is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the

[1] The director's statement that "the petitioner has a " is not supported by the record. Accordingly, the director's finding that the petitioner holds two master's degrees in education is withdrawn.

petitioner's work will be national in scope and whether he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of an alien's area of expertise cannot suffice to establish eligibility for a national interest waiver. *NYSDOT* at 220. Moreover, it cannot suffice to state that the petitioner possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

The petitioner filed the Form I-140 petition on October 6, 2011. In an October 3, 2011 letter accompanying the petition, counsel asserted that the petitioner's national interest waiver is based on his GTT certification, appointment as STEM (Science, Technology, Engineering and Mathematics) Specialist at [redacted] academic degrees, and ten years of post-baccalaureate progressive work experience. Academic records, occupational experience, and professional certifications are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (C), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act. The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his field of expertise.

In his letter accompanying the petition, counsel did not mention the *NYSDOT* guidelines or explain how the petitioner meets them. The record does not show how the petitioner's work will impact the field beyond [redacted] With regard to the petitioner's teaching duties, there is no evidence establishing that the benefits of his work would extend beyond his local school system such that they will have a national impact. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. In the present matter, the petitioner has not shown the benefits of his impact as a middle school teacher beyond the system and, therefore, that his proposed benefits are national in scope. In the present matter, the benefits of the petitioner's impact as middle school teacher are limited to students in the and, therefore, not national in scope. In addition, the record lacks specific examples of how the petitioner's work as a teacher has influenced the education field on a national level. At issue is whether this petitioner's contributions in the field are of such significance that he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *NYSDOT* at 219, n. 6.

The petitioner submitted various letters of support from administrators, teachers, parents, and his GTT instructor discussing his work and qualifications as an educator. As some of the letters contain similar claims addressed in other letters, not every letter will be quoted. Instead, only selected examples will be discussed to illustrate the nature of the references' claims.

Principal of stated:

> Alter a year of observing [the petitioner's] science classes and his active participation in different programs in the school and community, I personally requested him to teach and start the STEM class at Based on my experience in teaching and considering the four core values of science, technology, engineering and math, I planned with [the petitioner] in 2008 to fully implement the program at our school.
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> * * *
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> [The petitioner] has been one of the shining stars on our staff that has been able to remain undaunted by the trials and challenges. . . . I am giving a big credit for the new STEM class that I planned and assigned to [the petitioner] during that school year. He has always been willing to do afterschool programs, tutor, and spearhead programs that other schools in our district are unable to maintain.
>
> The Prototype Project of the Year that he is planning to implement is an excellent plan in teaching science for middle school. After two years of running the STEM program and several engineering projects that he successfully implemented, he is now prepared and ready to come out from his comfort zone and step up a new challenging and innovative idea to continuously improve in teaching science. This will promote the students to be creative and responsible in their education at the middle school level.
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> * * *
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> [The petitioner] is an essential member of our staff and without him the Science department will suffer a huge loss. He has had extensive training in the STEM/GTT program. All of the accomplishments and awards won were due to his training, and his dedication to make the program a success.

Mr. stresses the petitioner's contributions to his school and comments on the petitioner's involvement with the STEM program at and the petitioner's "extensive training," but does not indicate that the petitioner's work has had, or will continue to have, an impact beyond the students under his tutelage and the local school system that employed him.

Instructional Supervisor for the stated:

> From 2006 to 2011, I served as the middle school science instructional specialist for
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> * * *
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> I was first introduced to [the petitioner] upon observing his seventh grade science class at Due to his extraordinary ability to plan creative lessons that motivate and engage his students along with excellent classroom management strategies, I invited [the petitioner] to join the curriculum writing team in October 2006. As a result, he participated in curriculum writing every summer to update the state standards in lesson plans as well as to develop and implement professional development sessions for middle school science teachers. As part of the team, he also wrote, reviewed and proofread original selected response and Brief Constructed Response (BCR) test questions for the Grades 6, 7 and 8 science assessment booklets. The curriculum team also planned, organized and implemented the Orientation sessions for new teachers. Not only did [the petitioner] facilitate the orientation, but he was also invited to serve as a panelist for the new teachers in 2007.
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> * * *
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> In addition, [the petitioner] was given an assignment as the only Gateway to Technology (GTT) teacher in in the summer of 2009. His GTT training is extremely valuable to our middle school science, technology, engineering, and mathematics (STEM) program. With the national STEM movement, [the petitioner] will prove extraordinarily beneficial as a facilitator for students and middle school teachers and for his knowledge and experience with regards to STEM education.

Ms. comments on the petitioner's activities as a member of the curriculum writing team, and as a curriculum orientation coordinator and panelist for new teachers, but she does not indicate how the petitioner's impact or influence as an educator is national in scope.

Assistant Principal, , stated:

I have known [the petitioner] professionally for several years. . . . His ability to connect with his students and colleagues is truly superior. He has excellent written and verbal communication skills, is extremely organized, reliable and computer literate. [The petitioner] can work independently and is able to follow through to ensure that the job gets done. He accomplishes these tasks with great initiative and with a very positive attitude. [The petitioner] displays strong analytical qualities and is eager to accept challenging assignments. He achieves optimal levels of personal performance and accomplishments through effectively establishing task priorities. For instance, he successfully produced the first annual STEM night at Each of his students was able to produce projects and present the importance of their projects to the public. [The petitioner] is highly skilled in teaching science and the STEM program. He demonstrates a high degree of originality and creativity, and he commands a high degree of influence. [The petitioner] displays industriousness, conscientiousness and diligence in performing tasks. He is exceptionally reliable and trustworthy when given an assignment.

Ms. comments on the petitioner's personal qualities, teaching skills, and activities at but she fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

Dr. Professor of the Practice, Mechanical Engineering, Baltimore County, stated:

As the Director of the I oversee the training of over 150 middle and high school teachers each year. Teachers participate in a two week, eighty hour training in order to become certified in a single PLTW course.

* * *

Gateway to Technology is an engineering course offered to selected middle school students. This project-based program is designed to challenge and engage their natural curiosity and imagination. This program is classified into two categories: Basic and Advanced. In Gateway to Technology-Basic, the teacher covers Design and Modeling, Automation and Robotics and Energy and the Environment. . . . Gateway to Technology-Advanced focuses more on the engineering part of flight and space, the magic of electrons and the science of technology. Both courses require an intensive 80-hour training to complete the certification process. . . . [The petitioner] has completed the certification training for Gateway to Technology-Basic in the summer of 2010 and Gateway To Technology-Advanced in the summer of 2011.

[The petitioner] is one of the highly qualified teachers in for Gateway to Technology for Basic and Advanced levels. His academic qualifications and professional traits are indispensable in the field of education especially in the implementation of the four core values of Science, Technology, Engineering and Math.

Dr. describes two GTT training programs completed by the petitioner and asserts that his "academic qualifications and professional traits are indispensable in the field of education." However, as previously discussed, special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *NYSDOT* at 221. Dr. further states that the petitioner is a "highly qualified" teacher in the PGCPS GTT program, but any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for alien labor certification. *NYSDOT* at 220-221. Dr. observations fail to demonstrate that the petitioner's work has influenced the field as whole, or that the petitioner has or will benefit the United States to a greater extent than other similarly qualified middle school teachers.

The petitioner's references praise his teaching abilities, personal character, and GTT training qualifications, but they do not demonstrate that the petitioner's work has had an impact or influence outside of the system. They also do not address the *NYSDOT* guidelines which, as published precedent, are binding on all USCIS employees. *See* 8 C.F.R. § 103.3(c). That decision cited school teachers as an example of a profession in a field with overall national importance (education), but in which individual workers generally do not produce benefits that are national in scope. *NYSDOT* at 217, n.3.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

In addition to the reference letters, the petitioner submitted the following:

1. Maryland Educator Certificates valid from July 1, 2006 – June 30, 2011 and July 1, 2011 – June 30, 2016;
2. A Public School Teacher Certificate from the State of New York;

3. A "Certification of Good Standing" from the
4. A New York State Teacher Certifications Examinations Score Report;
5. Filipino Board of Professional Teachers Examinations Score Report;
6. Bachelor of Science degree in Biology;
7. Academic transcripts;
8. Employment verifications;
9. A "Certificate of Appreciation" from the Principal and the Parent Teacher Association President at thanking the petitioner for the "time and talent" that he gave to the school's students (May 3, 2011);
10. An "Employee of the Month" award from the Principal at (December 2006);
11. A National Science Teachers Association Membership;
12. A Maryland State Education Association Membership;
13. A June 1, 2011 letter from to "Mr. ' reflecting an $1,800.00 "contribution from the and
14. Financial Incentive Rewards for Supervisors and Teachers "Deposit Slip" (December 2010) stating: "This award is conferred to teachers of subject areas identified by and the state of Maryland as hard to staff due to limited certificates being issued."

Again, academic records, occupational experience, professional certifications, membership in professional associations, and recognition for achievements are all elements that relate to a finding of exceptional ability, but exceptional ability is not sufficient to establish eligibility for the national interest waiver. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including alien employment certification). Particularly significant awards may serve as evidence of the petitioner's impact and influence on his field, but the petitioner has failed to demonstrate that the awards he received (items 9, 10, and 14) have more than local or institutional significance. With regard to item 13, there is no documentary evidence from the specifically identifying the petitioner as the recipient of a ' Cash Award" as indicated in the petitioner's list of "Accomplishments." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Additionally, the petitioner failed to submit documentary evidence showing that items 1 – 14 are indicative of the petitioner's influence on the field of education at the national level.

The petitioner submitted copies of his "satisfactory" teacher evaluations from The petitioner, however, failed to demonstrate how the evaluations reflect that he has impacted the field to a substantially greater degree than other similary qualified science teachers and how his specific work has had significant impact outside of the school systems where he has taught.

The petitioner submitted a copy of the "Curriculum Framework Progress Guides" for "Sixth Grade Honors Science" and "Eighth Grade Honors Science" identifying his name among more than twenty other contributors to each of the two guides. While the petitioner appears to have contributed at some level to the teacher's guides, there is no documentary evidence showing that his material was utilized and adopted by schools outside of Moreover, there is no evidence demonstrating that the petitioner's specific contribution to the Curriculum Framework Progress Guide has influenced the field as whole or otherwise had a national impact.

The petitioner also submitted documentation pertaining to several projects that he worked on for including a "Winter Break Packet Teacher's Guide" for Grade 8 Science, a "Spring Break Student Packet" for Grade 8 Science, a STEM lesson plan to support a prototype project at his school, and the GTT program STEM Night exhibition. However, there is no documentary evidence showing that the petitioner's projects for have influenced the field of education at the national level.

In addition, the petitioner submitted numerous certificates of completion for training courses and seminars relating to his professional development. While taking courses and attending seminars are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

The director issued a request for evidence (RFE) on April 24, 2012, instructing the petitioner to submit evidence to establish that the benefits of his proposed employment "will be national in scope" and that he "has a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner submitted a 2009 article in the *Wall Street Journal* entitled "The Importance Math & Science in Education"; an article entitled "Importance of Science and Math Education"; an article entitled "STEM Sell: Are Math and Science Really More Important Than Other Subjects?"; the written testimony of Microsoft's Bill Gates before the Committee on Science and Technology of the United States House of Representatives (March 12, 2008); an article entitled "Supporting Science, Technology, Engineering, and Mathematics Education – Reauthorizing the Elementary and Secondary Education Act"; a copy of Section 1119 of the No Child Left Behind Act (NCLBA); a statement by U.S. Secretary of Education Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results; information about STEM fields printed from the online encyclopedia *Wikipedia*; and an article discussing the highlights from the Trends in International Mathematics and Science Study (2007). As previously discussed, general arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual benefits the national interest by virtue of engaging in the field. *NYSDOT* at 217. Such assertions and information address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. None of the preceding documents demonstrate that the petitioner's specific work as a middle school teacher has influenced the field as a whole.

The petitioner's response to the RFE also included a certificate for achieving "3rd Place in Robotics Challenge" at the and a photograph from the event. The petitioner also submitted a 1st Place "Green" medal and a 1st Place "Quiz Bowl" medal from the The petitioner and his students received the preceding awards subsequent to the petition's October 6, 2011 filing date. In addition, the petitioner submitted a July 2012 syllabus for a Robotics course at the Eligibility, however, must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, the July 2012 Robotics course and the awards from the cannot be considered as evidence to establish the petitioner's eligibility. Regardless, there is no documentary evidence demonstrating that the Robotics course syllabus and the awards are indicative of the petitioner's influence on the field as a whole.

In addition, the petitioner's response included a July 1, 2012 letter of support from Outreach Teacher, In her letter, Ms. describes the petitioner's work for as a science curriculum writer, as a presenter at new teacher professional development workshops, as a GTT-certified teacher, and as a teacher at the but she does not provide specific examples of how the petitioner's work has had an impact outside of or has otherwise influenced the field as a whole.

The director denied the petition on December 19, 2012. The director found that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States. The director indicated that the petitioner had not shown that his contributions "will impart national-level benefits." The director also determined that the petitioner had failed to demonstrate that he will "specifically benefit the national interest of the United States to a substantially greater degree than a similarly qualified U.S. worker."

On appeal, counsel asserts that "USCIS erred in giving insufficient weight to the national educational interests enunciated in the No Child Left Behind Act [NCLBA] 2001." Counsel notes that Congress passed the NCLBA three years after the issuance of NYSDOT as a precedent decision, and claims that "[t]he obscurity in the law that NYSDOT sought to address has been clarified," because "Congress has spelled out the national interest with respect to public elementary and secondary school education" through such legislation. In addition, counsel contends that "the NCLB Act and the Obama Education Programs, taken collectively, provide the underlying context for the adjudication of a national interest waiver application made in conjunction with an E21 visa petition for employment as a Highly Qualified Teacher in the public Middle School Science sector."

Counsel does not support the assertion that the NCLBA modified or superseded *NYSDOT*; that legislation did not amend section 203(b)(2) of the Act. Counsel identifies no specific legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec.

533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. As Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*, counsel has not shown that the NCLBA contains a similar legislative change.

Counsel further states:

> With respect to the E21 visa classification, INA § 203(b)(2)(A) provides in relevant part that: "Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the **national . . . educational interests**, . . . of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

Counsel, above, highlights the phrase "national . . . educational interests," but the very same quoted passage also includes the job offer requirement, *i.e.*, the requirement that the alien's "services . . . are sought by an employer in the United States." By the plain language of the statute that counsel quotes on appeal, an alien professional holding an advanced degree is presumptively subject to the job offer requirement, even if that alien "will substantially benefit prospectively the national . . . educational interests . . . of the United States." Again, neither the Act nor the NCLBA create or imply any blanket waiver for highly qualified foreign teachers. As members of the professions, teachers are included in the statutory clause at section 203(b)(2)(A) that includes the job offer requirement.

Counsel asserts that the director "erred in disregarding evidence demonstrating the national scope of the petitioner's proposed benefit through his effective role in serving the national educational interest of closing the achievement gap." The record, however, contains no evidence that the petitioner's efforts have significantly closed that gap in [redacted] or nationally. The national importance of "education" as a concept, or "educators" as a class, does not establish that the work of one teacher produces benefits that are national in scope. *NYSDOT* at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYSDOT* threshold. The aggregate national effect from thousands of teachers does not give national scope to the work of each individual teacher.

Counsel continues:

> The national priority goal of closing the achievement gaps between minority and nonminority students, and between disadvantaged and more advantaged children is especially relevant in the context of [redacted] and [the petitioner's] assigned school. The 2012 MSA Reading results

> show that out of the 24 Maryland school districts ranked near the bottom at the "All Student" level for each MSA-covered grade level . . . .

The petitioner's appellate submission includes 2012 MSA Reading results for public schools, and 2012 public school progress reports for . The petitioner has worked for since 2006, and thus had been there for a number of years before the administration of the 2012 MSA tests. Counsel does not explain how the 2012 MSA results for (which indicate low rankings relative to other Maryland school districts) establish that the petitioner has played an effective role in "closing the achievement gap."

Counsel asserts that the petitioner "is an effective teacher in raising student achievement in STEM," but he cited no documentary evidence to support the claim. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. In addition, while counsel asserts that the petitioner has "proven success in raising proficiency of his students," he did not point to specific STEM test results or other documentary evidence in the record to support the assertion. Regardless, there is no documentation demonstrating that the petitioner's work has had an impact or influence outside of the school systems where he has taught.

Counsel asserts that the "director erred in his appreciation of petitioner's past achievement," but counsel fails to point to evidence in the record showing that the petitioner's specific work has had a national impact or has otherwise influenced the field as a whole.

Counsel quotes remarks made by then-President George H.W. Bush when he signed the Immigration Act of 1990, which created the national interest waiver: "This bill provides for vital increases for entry on the basis of skills, infusing the ranks of our scientists and engineers and educators with new blood and new ideas." Counsel interprets this passage to mean that Congress created the national interest waiver for educators. The Immigration Act of 1990, however, was not restricted to the creation of the waiver. It was, rather, an overhaul of the entire immigration structure, creating new employment-based immigrant classifications to replace the "third preference" and "sixth preference" classifications previously in place. "[S]cientists and engineers and educators" are all members of the professions who, under the terms dictated by Congress in the Immigration Act of 1990 (as it amended the Act), are all subject to the job offer requirement.

Counsel states that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers and that USCIS "should have presented its own comparable worker." The *NYSDOT* guidelines, however, do not require an item-by-item comparison of the petitioner's credentials with those of qualified United States workers. The key provision is that the petitioner must establish a record of influence on the field as a whole. Moreover, there is no provision in the statute, regulations, or *NYSDOT* requiring the director to specifically identify another equally qualified school teacher. In visa petition proceedings, it is the

petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

Counsel contends that "the Immigration Service is requiring more from the beneficiary's credentials [ ] tantamount to having exceptional ability," but an individual is not required to qualify as an alien of exceptional ability in order to receive the national interest waiver. As previously discussed, the requirements for exceptional ability are separate from the threshold for the national interest waiver. It remains that the petitioner's evidence does not establish eligibility for the national interest waiver. The director did not require the petitioner to establish exceptional ability in his field. Instead, the director observed that the petitioner's evidence does not show that the petitioner's work has had an influence beyond the school system that employed him.

Counsel asserts that while the NCLBA "requirements set minimum standards for entry into teaching of core academic subjects, they have not driven strong improvements in . . . the effectiveness of teachers in raising student achievement." However, assertions regarding the need for educational reform in the United States only address the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. In addition, counsel quotes a study that concluded the "Teach For America" program "rarely had a positive impact on reading achievement." The record, however, does not include a copy of the study. Once again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena* at 534 n.2; *Matter of Laureano* at 3 n.2; *Matter of Ramirez-Sanchez* at 506. Regardless, counsel does not show that the petitioner's individual teaching efforts, after several years in the United States, have set him apart from other educators with regard to raising student achievement in or nationally.

Counsel emphasizes "the critical timeline" and "time-sensitive obligation" for "hiring 'Highly Qualified teachers,'" and claims that the labor certification process cannot accommodate this need because "[t]he United States Department of Labor minimum education requirement . . . for Middle School Science Teacher is just a bachelor's degree." Counsel further states: "Doing a labor certification process for the beneficiary, faithful to the Foreign Labor Certification regulations, i.e., require only a bachelor's degree, may not meet the objective of the employer to hire highly qualified teachers pursuant to No Child Left Behind (NCLB) Law. . . ."

Section 9101(23) of the NCLBA, 20 U.S.C. § 7801(23), defines the term "highly qualified" in reference to teachers. Sections 9101(23)(B) and (C) of the NCLBA require that a "highly qualified" teacher "holds at least a bachelor's degree." Section 9101(23)(B) of the NCLBA also refers to "highly qualified" teachers who are "new to the profession." Thus, the petitioner's master's degree equivalency and "over 11 years of experience" are not required for "highly qualified" status under the NCLBA. In addition, the petitioner has not established that the "highly qualified" standard involves requirements that are significantly more stringent than those for middle school teachers outlined in the U.S. Department of Labor's *Occupational Outlook Handbook*, or that a public school could not obtain a labor certification for a "Highly Qualified Teacher." Counsel, therefore, does not support his assertion that the labor certification process frustrates the NCLBA's mandate for schools to employ "highly qualified teachers."

Counsel contends that a waiver would ultimately serve the interests of United States teachers, because if schools "fail to meet the high standard required under the No Child Left Behind (NCLB) Law," the result would be "not only . . . closure of these schools but [also] loss of work for those working in those schools." Counsel, however, offers no specific examples of school closures and teacher layoffs attributable to not meeting NCLBA standards. Once again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. In addition, counsel asserts that by waiving the labor certification requirement for highly qualified special educators such as the petitioner, "more American teachers will have . . . employment opportunities" because standards will be met and schools will not be abolished. Again, USCIS grants national interest waivers on a case-by-case basis, rather than establishing blanket waivers for entire fields of specialization; there are no blanket waivers for highly qualified foreign teachers. *NYSDOT* at 217.

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that his past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *Id.* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole"). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende* at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.